

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

In re:

Case No. 14-42226

ROBERT MOSS, II,

Chapter 7

Debtor.

Thomas Tucker

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**ORDER DENYING DEBTOR'S MOTION FOR SANCTIONS FOR  
RETURN OF PRE-PETITION PREFERENTIAL TRANSFERRED FUNDS  
AND POST PETITION FUNDS**

This case is before the Court on a motion by Debtor entitled "Motion for Sanctions for Return of Pre-Petition Preferential Transferred Funds and Post Petition Funds" (Docket # 14, the "Motion"). The Motion seeks relief based on the pre-petition and post-petition garnishment of funds by unsecured creditor Sir Finance Corp. (the "Creditor").

The Court will deny the Motion to the extent it seeks any relief for the Creditor's pre-petition garnishment of funds, because in order to seek relief as to the pre-petition garnishment (on the ground that it was a preferential transfer avoidable under 11 U.S.C. §§ 547 and 522(h)), the Debtor must file an adversary proceeding to avoid and recover the transfer. *See* Fed. R. Bankr. P. 7001(1). In addition, the Court notes that it is not a violation of the automatic stay under 11 U.S.C. § 362(a) for a creditor simply to retain preferential transfers that were made before the filing of the bankruptcy case.

The Court will also deny the Motion, without prejudice, to the extent the Motion seeks any relief for a claimed violation of the automatic stay by the creditor relating to any post-petition garnishments, for the following reasons:

1. The Motion does not actually allege the amount of post-petition garnishments -- it says only that the amount is "over \$665.77" (Motion at ¶ 5).
2. The Motion says that Exhibits A, B, and C are attached to it, but such exhibits in fact are not attached to the Motion, and were not otherwise filed.
3. The proposed order attached to the Motion is not specific enough in the relief it seeks — it does not order the Creditor or the Creditor's attorney to return any specific amount of money to the Debtor, and it does not specify what "sanctions" the Debtor wants the Court to assess (rather, it requests a hearing to assess unspecified sanctions).

Accordingly,

IT IS ORDERED that the Motion is denied, without prejudice to the extent stated above.

**Signed on May 23, 2014**

**/s/ Thomas J. Tucker**

**Thomas J. Tucker  
United States Bankruptcy Judge**